



बिहार गजट

असाधारण अंक

बिहार सरकार द्वारा प्रकाशित

17 माघ 1940 (श०)

(सं० पटना 194) पटना, बुधवार, 6 फरवरी 2019

निर्वाचन विभाग

अधिसूचना

4 फरवरी 2019

सं० एम-०१-००१/२०१९-०५—निर्वाचन अर्जी संख्या-१३/२०१५ से संबंधित भारत निर्वाचन आयोग, नई दिल्ली की अधिसूचना संख्या-८२/BR-LA/EP(13/2015)ES-1/2018 दिनांक 24.12.2018 सर्वसाधारण की जानकारी के लिए प्रकाशित की जाती है।

बिहार-राज्यपाल के आदेश से,
प्रवीण कुमार गुप्ता,
संयुक्त मुख्य निर्वाचन पदाधिकारी ।

भारत निर्वाचन आयोग

अधिसूचना

निर्वाच सदन, अशोक रोड नई दिल्ली-110001, तारीख:-24 दिसम्बर, 2018 / 3 (पौष), 1940 (शक)

सं 82/BR-LA/EP/(13/2015)/ES-1/2018: लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106(ख) के अनुसरण में, निर्वाचन आयोग एतदद्वारा निर्वाचन अर्जी सं 13/2015 में दिये गये उच्च न्यायालय, पटना के तारीख 12/10/2018 एवं 02/11/2018 के आदेशों को प्रकाशित करता है।

IN THE HIGH COURT OF JUDICATURE AT PATNA
Election Petition No.13 of 2015

Dilip Kumar Mishra Petitioner/s Versus
Smt. Sunita Singh Chauhan Respondent/s

Appearance :

For the Petitioner/s : Mr. Jitendra Singh
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
CAV ORDER

Date: 12 -10-2018

I.A.No.7171 of 2016

The respondent has filed an interlocutory application no. 7171 of 2016 praying therein to dismiss the election petition as legally not maintainable.

2. The petitioner has filed this case for the declaration of election of the respondent as member of 30, Belsand Assembly constituency for 16th Bihar Legislative Assembly as void on the ground that she had no right to contest the election from the said constituency. The nomination papers of respondent were illegally accepted and after completion of election process, she was declared elected. She was not an elector of 30, Belsand Assembly Constituency rather she is/was elector of Sitamarhi Assembly Constituency.

3. It was submitted that accordingly to provision of Section 2(1) (e) and 79 (d) of Representation of People Act 1951, the elector of a Parliamentary/Legislative Assembly Constituency has right to be a candidate in the concerned constituency and non elector of the constituency has no right to be a candidate. In support of his contention, the learned counsel referred to para 12 of the ruling reported in AIR 1972 SC page 2284. The Hon'ble Apex Court has held in paragraph-12 that an important and noticeable difference between qualifications prescribed by parliament for the membership of a Legislative Assembly by Section 5 of the Representation of the People Act, 1951 and those for the membership of a Legislative Council by Section 6 of that Act is that so far as a member of the Legislative Assembly is concerned, he or she has to be an elector of the constituency from which he or she stands.

4. The learned counsel for the respondent on the other hand referred to the pleadings of the election petition and submitted that the only ground for declaring the election of the respondent as void is that she was/is not the elector of the constituency as her name is not in the voter list of said constituency. There is no other ground for declaring her election as void and so in view of submission of both the parties, the point arises for consideration is as to whether the election of respondent no.1 from 30 Belsand Assembly constituency is illegal and void on account of her not being the elector of said constituency.

5. In this regard, I would like to refer the relevant provisions of Representation of People Act, 1951.

Section : 5 Qualification for membership of Legislative Assembly.—(1) A person shall not be qualified to be chosen to fill a seat in the Legislative Assembly of a State unless—

- (a) in the case of a seat reserved for the Scheduled Castes or for the Scheduled Tribes of that State, he is a member of any of those castes or of those tribes, as the case may be, and is an elector for any Assembly constituency in that State;

-
- (b) in the case of a seat reserved for an autonomous district of Assam, he is a member of a [Schedule Tribe of any autonomous district] and is an elector for the Assembly constituency in which such seat or any other seat is reserved for that district; and
 - (c) in the case of any other seat, he is an elector for any Assembly constituency in that State:

Section 33 Presentation of nomination paper and requirements for a valid nomination.—

- (1) -----
- (2) -----
- (3) -----
- (4) -----
- (5) Where the candidate is an elector of a different constituency, a copy of the electoral roll of that constituency or of the relevant part thereof or a certified copy of the relevant entries in such roll shall, unless it has been filed alongwith the nomination paper, be produced before the returning officer at the time of scrutiny.

Section 33 (7)

- (a) -----
- (b) in the case of a general election to the Legislative Assembly of a State (whether or not held simultaneously from all Assembly constituencies), from more than two Assembly constituencies in that State;

6. On going through the above provisions, it is manifest that a candidate can contest general election from any legislative Assembly Constituency in the State and further that a candidate can contest from more than two assembly constituencies in the State who must be a voter of any one constituency of the State. The rulings reported in AIR 1972 SC 2284 and AIR 1999 SC 1723 referred to by the learned counsel for the petitioner are not applicable in view of the fact that the issues before apex court were quite different. Similar issues were raised before this Court in CWJC no. 3468 of 2009 Bindeshwar Sah Vs. Union of India and CWJC no.7550 of 2012 Dilip Kumar Mishra Vs. The Union of India and this Court had dismissed both the applications. In the case at hand, I find that the respondent being elector of one of the constituencies of State had rightly filed nomination from 30, Belsand Assembly constituency.

7. The petitioner has not raised any other point for consideration except to declare the election of respondent no. 1 as void on solitary ground of her not being an elector of a constituency from where she has been elected.

8. In view of above discussion, I find that the writ application is legally not maintainable. The interlocutory application no. 7171 of 2016 is accordingly allowed and this writ application is dismissed.

(Sanjay Kumar, J)

IN THE HIGH COURT OF JUDICATURE AT PATNA
Election Petition No.13 of 2015

Dilip Kumar Mishra Petitioner/s Versus
Smt. Sunita Singh Chauhan Respondent/s

Appearance :
For the Petitioner/s : Mr. Bindeshwar Sah, Advocate
For the Respondent/s : Ms. Alka Verma, Advocate

CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL ORDER

21 02-11-2018

Heard learned counsel for the petitioner and perused the order dated 12.10.2018.

It appears that in para-6 of the said order, the word 'quote' has been wrongly typed in place of the word 'quite' and further the words 'writ application' have been wrongly typed in place of the words 'election petition' at two places in para-8 of said order.

Let the word 'quote' be read as 'quite' in para 6 and the words 'writ application' be read as 'election petition' at both places in para-8.

The order dated 12.10.2018 is accordingly modified.

(Sanjay Kumar, J)

आदेश से,
आनन्द कुमार पाठक,
सचिव,
भारत निर्वाचन आयोग ।

ELECTION COMMISSION OF INDIA

NOTIFICATION

Nirvachan Sadan, Ashoka Road, New Delhi-110001/ Dated 24th December, 2018, 3 (Pausha), 1940 (Saka)

No. 82/BR-LA/EP/(13/2015)/ES-1/2018:- In pursuance of Section 106 (6) of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the Order dated the 12.10.2018 and 02.11.2018 of the High Court of Judicature at Patna in Election Petition No. 13/2015

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Election Petition No.13 of 2015**

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Smt. Sunita Singh Chauhan.... Respondent/s

Appearance :
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For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
CAV ORDER

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Appearance :

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For the Respondent/s : Ms. Alka Verma, Advocate

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Let the word 'quote' be read as 'quite' in para 6 and the words 'writ application' be read as 'election petition' at both places in para-8.

The order dated 12.10.2018 is accordingly modified.

(Sanjay Kumar, J)
By order,
ANAND KUMAR PATHAK,
SECRETARY,
ELECTION COMMISSION OF INDIA.

अधीक्षक, सचिवालय मुद्रणालय,
बिहार, पटना द्वारा प्रकाशित एवं मुद्रित।
बिहार गजट (असाधारण) 194-571+50-डी०टी०पी०।

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